FACT FINDING DISCUSSION AND RECOMMENDATIONS

Between **Ceres Unified School District** and **Ceres Unified Teachers' Association CTA NEA**	Re: Case No. SA-IM-3127-E

Impartial Chair

Bonnie Prouty Castrey
Post Office Box 5007
Huntington Beach, California 92615

District Panel Member

Ron Bennett, President
School Services of California
1121 L Street, Suite 1060
Sacramento, CA 95814

Association Panel Member

Gerry Fong, NOD Specialist
California Teachers' Association
343 Hatch Drive
Foster City, CA 94404

Hearings Held

May 24 and 25, 2010
Ceres Unified School District Offices
2503 Lawrence Street
Ceres, CA 95307-3301

BACKGROUND

Ceres Unified School District (District or Employer) and the Ceres Unified Teachers' Association (Association or CUTA), an affiliate of the California Teachers Association (CTA) and National Educators' Association (NEA), are the parties in this fact finding matter. The nearly 600 certificated staff in this bargaining unit are members of CUTA. The District enrollment continues to maintain at about 12,200 students. Demographically the students face many challenges and the teachers who must teach them have to incorporate multiple strategies to assist these students so that they are able to learn. About a third are English Language Learners and three quarters are socio-economically disadvantaged. With all these challenges and more, this District has achieved impressive growth in their API Scores over time. This is in no small measure to the teaching which goes on everyday in the classrooms.

The parties "sunshined" their proposals for bargaining in the Spring of 2009 and met in March and May of 2009. At that time, they agreed to defer any further negotiations until January of 2010 when both parties would have information regarding the Governor's proposed budget. The parties engaged in direct negotiations again on January 26, 2010 and February 17, 2010. The District initially filed a request for Certification of Impasse with PERB on January 28, 2010, but withdrew that request. They filed a second request on February 18, 2010 and were assigned a mediator from the California State Mediation and Conciliation Service. The Parties engaged in mediation and when agreement was not reached, the mediator certified them to Fact Finding on April 15, 2010. Subsequently, the District requested that the parties proceed to Fact Finding.

The District selected Ron Bennett, President of School Services of California as the District Panel Member and the Association selected Gerry Fong, NOD Specialist from CTA to be their Panel Member. The Panel Members then selected Bonnie Prouty Castrey as the Impartial Chair and so notified PERB.

The Panel initially met in conference and then held a hearing with the parties on May 24 and 25, 2010. Both parties presented their documentation and facts regarding the issues before the Panel. The Panel Members then attempted to help the parties to reach a mediated settlement in Fact Finding. A number of issues were codified in a Tentative Agreement in Factfinding and are hereby incorporated by reference into this Report and Recommendation. When the effort to reach a complete agreement was not fruitful, the Members carefully studied both parties submissions thoroughly, met by conference call to discuss the issues and the Chair drafted this Report and Recommendations.

In this matter, the Panel is guided by the California Government Code Section 3548.2 of the EERA which states in pertinent part:

> In arriving at their findings and recommendation, the Fact Finders shall consider, weigh, and be guided by all the following criteria:
>
> 1. State and federal laws that are applicable to the employer.

2. Stipulations of the parties.

3. The interests and welfare of the public and the financial ability of the public school employer.

4. Comparison of the wages, hours, and conditions of employment of the employers involved in the fact finding proceeding with the wages, hours, and conditions of employment of other employees performing similar services and with other employees generally in public school employment in comparable communities.

5. The consumer price index for goods and services, commonly known as the cost of living.

6. The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits; the continuity and stability of employment and all other benefits received.

7. Any other facts, not confined to those specified in paragraphs (1) to (6), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations."

ADDITIONAL PERTINENT STATE LAWS

Government Code Section 3547.5

(a) Before a public school employer enters into a written agreement with an exclusive representative coverings matters within the scope of representation, the major provisions of the agreement, including, but not limited to, the costs that would be incurred by the public school employer under the agreement for the current and subsequent fiscal years, shall be disclosed at a public meeting of the public school employer in a format established for this purpose by the Superintendent of Public Instruction.

(b) The superintendent of the school district and the chief business official shall certify in writing that the costs incurred by the school district under the agreement can be met by the district during the term of the agreement. This certification shall be prepared in a format similar to that of the reports required pursuant to Sections 42130 and 42131 of the Education Code and shall itemize any budget revision necessary to meet the costs of the agreement each year of its term.

(c) If a school district does not adopt all of the revisions to its budget needed in the current fiscal year to meet the costs of the collective bargaining agreement, the county superintendent of schools shall issue a qualified or negative certification for the district on the next interim report pursuant to Section 42131 of the Education Code.

STIPULATIONS OF CUSD AND CUTA

1. The Ceres Unified School District is a "public school employer" within the meaning of Section 3540.1(k) of the Educational Employment Relations Act.

2. The Ceres Unified Teachers' Association is a "recognized employee organization" within the meaning of Section 3540.1(I) of the Educational Employment Relations Act and has been duly recognized as the representative of this bargaining unit of the Ceres Unified School District.

3. The parties to this factfinding have complied with the public notice provisions of the Government Code section 3547 (EERA, "Sunshining" requirement)

4. The parties have complied with the Educational Employment Relations Act with regard to the selection of the Factfinding Panel and are timely and properly before the Panel.

5. The parties have complied with all the requirements for selection of the Factfinding Panel and have met or waived the statutory time limitations applicable to this proceeding.

6. The contract issues which are appropriately before the Factfinding Panel are as follows, all other matters were agreed upon by the parties during the course of the negotiations:

   Article XXIV Salary Schedule Provisions and Transferred Experience.

7. An impasse in bargaining was declared by the District on February 18, 2010. The informal mediation process proceeded as scheduled, and the parties continued to meet with the mediator in an effort to reach agreement April 15, 2010. The Public Employment Relations Board certified the matter to factfinding on April 19, 2010.

8. The Factfinding Panel chairperson, Ms. Bonnie P. Castrey, was jointly selected by both parties and notified of her assignment on or about May 5, 2010.

9. CUTA stipulates to The Law, Federal and State, and applicable EERA provisions.

10. CUTA stipulates to the expired Collective Bargaining

Agreement in Section 3 (of the Association Factfinding presentation binder).

11. CUTA stipulates to all the Tentative Agreements other than Article XXIV.

ISSUES

INABILITY TO PAY

DISCUSSION AND FINDING

The first issue is the question of inability to pay.

When a district asserts inability to pay, they have the burden of proving that they cannot afford to continue paying at the level they are and/or that they cannot afford to negotiate increases in compensation.

State law requires that school districts must maintain a positive ending balance in the current year and two successive school years. In other words, the budget for fiscal year/school year (FY) 2010-2011, which commences July 1, 2010 and ends June 30, 2011, must have a positive ending balance and a minimum three percent reserve (3%). In addition, FY 2011-2012 and FY 2012-2013 must also be able to show a positive ending balance.

Schools in California are dependent on The State of California for their revenue. The State is and has been in fiscal crisis for several years since at least 2007. Some economists have described California's budget as being in "free fall".

As a result of the State budget shortfall due to decreased sales tax, income tax, and other revenues, the State has cut school districts unrestricted and categorical (restricted) funding by billions of dollars. For this District, this amounts to more than a twenty percent (20%) decrease in unrestricted funding and approximately twenty percent (20%) in restricted funding. Had the State not cut its unrestricted funding, also referred to as Base Revenue Limit (BRL), CUSD would have received in the 2009-2010 FY, $6,373.00 for each student attending class each day (Average Daily Attendance or ADA). With the State decreasing its funding of the BRL, the District received only $4,951.00, a difference of $1,422.00 equal to 22.3%. In FY 2010-2011, the CUSD should receive $6,349.00, however, according to current State budget projections, the State will likely only fund the BRL at $4,983.00 per ADA, which represents a $1,366.00 deficit, equal to 21.5%. So, for every one dollar this District should receive for each student, it is only receiving about 81-82 cents (District Facts [DF] Inability to Pay tabs 16 and 17).

There is no question that these are huge losses in unrestricted revenues. The District has made cuts and spent down its reserves and is therefore deficit spending. The evidence shows that the District "self certified qualified" at the Second Interim report to the County. Subsequently, the County has certified the District as qualified and stated in their letter to the Assistant Superintendent of Business, dated April 12, 2010, at tab 27 in the District's Binder:

> Finally, thank you for being responsible and self-qualifying your Second Interim report! If you had not

> self-qualified your report, we would have been forced to qualify your budget based upon our oversight review. This avoids the awkwardness of overruling your district and its board of trustees. (DB Tab 27)

Finally, under State law, the Education Code at section 3547.5 provides that the superintendent and the chief business official of the district must sign that a collective bargaining agreement can be implemented and is affordable for the term of that agreement. The District asserts that they cannot continue to afford to pay the total compensation at the level in the current Collective Bargaining Agreement (CBA) and therefore they cannot certify the continuation of the terms of this CBA and meet the requirements of the law.

The Association recognizes the need for temporary changes in their salary but also argues vehemently that the cuts should be balanced with a reduced school year, both days inside the instructional year and outside the instructional year. They point out that the State has provided flexibility to Districts and Associations to decrease the school year to 175 days instead of the mandated 180 days. They also maintain that restoration language is crucial so that they are guaranteed to return to their current salaries as the State restores funding to the District. And, class sizes can be modestly increased to save thousands of dollars. They also suggested modifying the length of each instructional day to account for the minutes equivalent to a 180 day instructional year.

Based on the foregoing and taking into consideration both parties facts and arguments, the Chair finds that the District has met its heavy burden of proof and that it has shown that it does have an inability to pay this bargaining unit at the current total compensation in the CBA.

The next question is how to address this critical matter without totally devastating the bargaining unit members ability to live and the parties ability to effectively deliver the educational programs of the District to students.

RECOMMENDATIONS

In order to provide the planning for both the District and the CUTA membership, the Chair recommends the following three year agreement to be in an MOU:

Salary:

For 2010-11, salary, hourly rates and stipends shall be reduced to 91.5% (compensation percentage) of the scheduled amount, an 8.5% (percentage deficit) reduction.

For 2011-12, the District will use attrition losses to increase class size by not more than one student and 1% shall be restored to the salary schedule, leaving a 7.5% salary reduction (see work year below)*.

For 2012-13, the District will use attrition losses to increase class size by not more than one additional student, two total, and an additional 1% shall be restored to the salary schedule, leaving a 6.5% salary reduction (see work year below)*.

. For Example:

A. The salary schedules for the 2010-11 school year are (certificated, vocational, preschool, WCS) attached and incorporated into the Agreement. These salary schedules shall be paid at ninety-one and one-half percent (91.5%) of the indicated amounts.

B. A fully credentialed unit member teaching in a position which requires a Special Education credential will receive an additional $550 annually. This additional compensation shall be paid at ninety-one and one-half percent (91.5%) of the indicated amount.

C. Unit members with a Doctorate Degree will receive an additional $900 annually. This additional compensation shall be paid at ninety-one and one-half percent (91.5%) of the indicated amount.

Immediately following full restoration of salaries and stipends to the 2010-11 (March 5, 2009 MOU, item 3) level, the next priority for any additional revenues shall first be to restore class sizes to the 2009-10 level.

Additionally, it is the intention of the parties that if, during the duration of this agreement, the funding provided to the District by the State increases above the level anticipated in the District's three-year multi-year projection submitted with the adopted budget for 2010-11, salary restorations in addition to the level shown above shall be made.

a. For each year of the agreement, the actual funded base revenue limit per unit of ADA provided by the state shall be compared to the amount projected for that year in the 2010-11 MYP for that year.

b. If there is an increase of at least $50 in BRL per unit of ADA, .50% shall be added back to the salary schedule. An additional .50% shall be added for each $50 increment above the amount of BRL per unit of ADA planned for that year.

c. To avoid "double-counting", if in any year a salary restoration is made using the provisions of para. b., the BRL planned for each subsequent year and used as a baseline for restoration shall be increased by the dollar amount already used to provide salary restoration.

d. The District may, at its sole discretion, increase the Compensation Percentage at any time until it is restored to 100.0%.

e. The Association may open Article XXIV following the enactment of the State budget to discuss any additional revenue that may be used for salaries or any revision to the Compensation Percentage. The Association may also open Article XXIV as allowed under Article XXVI of this Agreement.

f. At no time shall the Compensation Percentage be less than that applied to the certificated administrative salary schedule.

g. By July 1, of each year, the District shall provide the Association with a copy of the three-year multi-year projection submitted with the adopted budget for each successive year. This document shall be in the SACS format.

Workyear:

In school year 2010-2011 the number of instructional days shall remain 180. The workyear calendar shall be reduced from 185 days to 180 days in 2010-2011.

1. *In school year 2011-2012 the instructional days shall be reduced to 178 days unless the District restores salaries at least an additional 1% to 6.5%. If the District restores the salaries to 6.5% as of July 1, 2011, the instructional year shall remain at 180 days and the work year will be 180 days.

2. **In school year 2012-2013, the instructional days shall be 178 days unless the District restores salaries at least an additional 1% to 5.5%. If the District restores the salaries to 5.5% as of July 1, 2012, the instructional year shall remain at 180 days and the work year shall remain at 180 days.

3. The work year shall not exceed 180 days until the salary schedule is fully restored to the 2010-11 (March 5, 2009 MOU, item 3) level. When the salary schedule is fully restored, the workyear shall be fully restored to 185 days as per current contract language.

Class Sizes:

As provided in the salary points, the District would temporarily increase all class size maximums in Article VIII by not more than one student for 2011-2012 and not more than two students for 2012-2013. Priority will be given to restoration of class sizes to the 2009-10 level immediately following restoration of salaries and instructional days.

Other Provisions:

Additionally, the following provisions shall apply:

a. Until the salary restoration is complete and salaries are returned to the 2010-11 (March 5, 2009 MOU, item 3) level:

1. The staff meeting time as defined in Article X, Section k shall be reduced by 90 minutes per month

2. Each unit member will only be required to attend one of the night functions described in Article X, Section P. The scheduling of the night functions will be at the discretion of the District.

3. As long as the Percentage Deficit is above 0.0%, the implementation date in the "Transitional salary year-moving from year round to traditional" M.O.U., dated 05/19/2004, shall be delayed until the year following the first year that the deficit is equal to 0.0%.

b. The number of personal necessity days shall be permanently increased by two (2), for a total of nine (9) days, both of which shall be "no tell" days.

c. The District shall fully implement the five (5) year evaluation cycle as permitted by the Ed. Code.

d. In consideration for the concession described above and the potential impact it may have on teachers nearing retirement, the District shall offer the following retirement incentive, if

Tentative Agreement is reached on or before June 30,2010 and ratified by the Association prior to July 15, 2010:

1. Unit members who notify the District in writing by the end of the business day June 30, 2010 of their decision to retire, with a retirement effective by July 31, 2010, shall be entitled to the incentive.

2. Eligible unit members will receive $296/month in additional District contributions to their retiree health and welfare benefits contribution (as defined in Article XXII) until the month of their 65th birthday.

3. Eligible members who take this incentive may receive the amount indicated in Section 2ii above as a cash payment should they not need the amount toward their post retirement benefits. This cash out option shall not be applicable to the contribution identified in Article XXII. Cash in lieu of the amount in section 2ii shall be paid once annually by the District.

4. This incentive shall only apply to unit members who worked during the 2009-2010 school year, retired by the end of July 2010 and provided timely notification as described above.

e. All previous tentative agreements shall be incorporated into the collective bargaining agreement.

f. The term of this agreement shall be 2010-11 thru 2012-13.

Association Panel Member

Concur X Dissent____

Gerry Fong

District Panel Member

Concur X Dissent____

Ron Bennett

Panel Chair

Bonnie Prouty Castrey

Issued in Huntington Beach, CA

June 15, 2010